

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Lands – SPS Nellore District - Revision Petition filed by Sri Md. Zameer Nawaz, S/o. Shah Nawaz of Nellore against the Proceedings of the Joint Collector, Nellore District issued in Rc.No.E8/1839/2006, dated 15.09.2006 - Allowed - Orders – Issued.

REVENUE (ASSN.II) DEPARTMENT

G.O.Ms.No.251.

Date 30-05-2014.
Read the following:-

1. Proceedings of the Mandal Revenue Officer, Chillakur, SPS Nellore District, Rc.No.B.251/2004, dated 26.09.2004.
2. Proceedings of the Revenue Divisional Officer, Gudur, SPS Nellore District D.Dis.No.B1.4307/2005, dated 27.02.2006.
3. Proceedings of the Joint Collector, Nellore, SPS Nellore District Rc.No.E8.1839/2006, dated 15.09.2006.
4. Govt. Memo.No.51114/Assn.II(1)/2006, dated 02.07.2007.
5. From the District Collector, SPS Nellore, Letter No.RC.E8/1839/05, dated 20-10-2007 addressed to the Govt.
6. Govt. Memo. No. 51114/Assn.II (1)/2006, dated 15.02.2008, 01.04.2009 and dated 15.10.2009.
7. Proceedings of the Revenue Divisional Officer, Gudur, SPS Nellore District D.Dis.No.B1.4009/2006, dated 12.01.2010
8. Govt. Memo. No. 51114/Assn.II (1)/2006, dated 22.04.2010, 15.10.2012 and dated 05.11.2012.
9. From the Advocate for the Revision Petitioner along with Vakalat and written arguments, dated 06.11.2012.
10. Govt. Memo. No.51114/Assn.II (1)/2006-11, dated 20.11.2012.
11. From the District Collector, SPS Nellore, Letter No.RC.E8/1839/06, dated 19.12.2012 addressed the Govt.
12. Govt. Memo.No.51114/Assn.II (1)/2006, dated 10.04.2013.

-:S:-

ORDER:-

The Joint Collector, Nellore, SPS Nellore District has dismissed the Revision Petition filed by Sri Mohd. Jameer Nawaz, S/o Shah Nawaz, Nellore, SPS Nellore District vide his proceedings 3rd read above.

2) Aggrieved by the above, the Petitioner has filed Revision Petition before the Government with prayer to set aside the Proceedings of the Joint Collector, Nellore, SPS Nellore District issued in the said proceedings 3rd read above.

3) The case is that during the verification of assigned land/ Government land / CJFS land, it was noticed by the Mandal Revenue Officer, Chillakur that the lands assigned to the poor eligible people for agricultural purpose purchased by the Revision Petitioner are as detailed below:-

| Name of the Village | Sy. No | Extent Ac. Cents | Name of the Assignee |
|---------------------|--------------|------------------|----------------------|
| <u>Budanam</u> | 200/A1 | 0.63 | Bandi Peraiah |
| | 199/5 | 0.14 | Valluru Penchalaiah |
| | 203/3 | 1.75 | Pandi David |
| | 199/4 | 2.04 | Chejerla Venkataiah |
| | 199/7 | 1.08 | Kalagunta Laxmaiah |
| | 199/7A | 0.54 | Valluru Ramanamurthy |
| | Total | 6.18 | |

4) A show-cause notice was issued by the Mandal Revenue Officer, Chillakur in Rc.B.251/03, dt.23.7.2004 to the Revision Petitioner as well as original assignees under the provisions of the P.O.T. Act. 9/77. In response to the show-cause notice,

the Revision Petitioner has submitted an explanation through his Counsel stating that the Act 9/77 has no application to the case and that the British Government granted the lands before the Independence of India i.e., during 1944 to 1946, that the Government have no right on the land and that the sales are not liable to be disputed. As the explanation offered by the Alienee was not convincing, the Mandal Revenue Officer resumed the above land to Government u/s. 3(1) of the A.P Assigned Lands (P.O.T) Act, 1977, vide proceedings 1st read above.

5) In the meantime, the Revision Petitioner has filed a Writ Petition No.19485/04 against issue of show cause notice and his consequential action in trying to evict the Petitioner from the scheduled land without passing any orders on the explanation submitted by the petitioner on 30.08.2004, and quash the same as illegal, arbitrary, malafide, violative of principles of natural justice. The Hon'ble High Court granted interim stay in W.P.M.P No.25520/2004, dated 19-10-2004 directing the Respondents not to evict the Petitioner except in accordance with law. Counter affidavit has been filed by the Mandal Revenue Officer, Chillakur.

6) The Hon'ble High Court of A.P. while disposing the W.P.No.19485/04 on 14.03.2005 observed that final orders passed even by the date of filing these petitions. So the petitioner have a remedy of appeal against those final orders. They can also file a suit for declaration that the lands in their possession are not Government lands and are private patta lands, if they feel that the land in their possession is private land, so petitioner rushing to the High Court is not but an abuse of process of Court.

7) The Petitioner has also filed W.A. No.1612/05 and the same was disposed on 05-09-05 with a direction to file appeal before the Appellate Authority within 10 days. Accordingly, Sri Md. Zameer Nawaz, S/o. Shah Nawaz has filed appeal before the Revenue Divisional Officer, Gudur, S.P.S. Nellore District.

8) The case was heard by the Revenue Divisional Officer, Gudur, the Counsel for the Petitioner submitted written arguments which were perused by the Revenue Divisional Officer, Gudur. The main contention of the Appellant are that the land in question is not an assigned land, that there are no recorded evidences to prove the same with the Mandal Revenue Officer, Chillakur, that the appellant has purchased the land on bonafide intention treating that the land is not assigned land, that the vendors of the appellant have purchased the land from the original holders, who were in possession and enjoyment prior to 1945, that they have perfected their title by adverse possession and that the provisions of the Act 9 of 1977 are not applicable to this case. The Counsel for the Petitioner has not filed any link documents in proof of the period of occupation by the vendors of the appellant and also failed to file any evidence to prove that the lands in question are private property. He merely relied upon the registration of sale transaction by the Registration Department. He focused that there are no entries in the revenue records to say that the land is assigned land except the dots (...) in diglot. The diglot is a comprehensive document of settlement of ryotwari tenure which shows details of every land. The dots (...) mentioned against a particular land in the diglot of the village connotes that the respective land was not under ryotwari tenure at the time of settlement. If there is no mention of name of the pattadar in respective column of the diglot against any particular land, it can be said that the land is not under ryotwari tenure at the time of settlements. All such unoccupied lands automatically vested with the Government. The Government has granted such lands to the land less poor for agriculture purpose subsequently under conditional grants. According to section 3(1) of the Act, 9 of 1977, transfer of any assigned lands by any way to others is prohibited. In case of contravention of the said provision of law, the Mandal Revenue Officer is competent to resume the land to Government or to restore it to the original assignees as per law. Accordingly, the Mandal Revenue Officer, Chillakur acted upon and passed the impugned orders. The Revenue Divisional Officer concluded that he found no reason to interfere with the orders of the Mandal Revenue Officer and accordingly dismissed the appeal as devoid of merits vide his proceedings in D.Dis.No.B1.4307/2005, dated 27.02.2006.

9) Aggrieved by the above orders of the Revenue Divisional Officer, Gudur; the Appellant has filed a Revision Petition before the Joint Collector, Nellore. The Joint Collector, Nellore in his proceedings 3rd read above, while dismissing the Revision Petition has stated that "*the observations of the Revenue Divisional Officer, Gudur in*

the order on the appeal are quite illustrative, that the Revenue Divisional Officer, Gudur elaborately discussed how the land is Government land, that the diglot is the fundamental record that shows the nature of the land, that wherever the name of the pattadar /owner is not entered against a particular S.No in diglot, it is absolutely Government land. The Revision petitioner did not produce any evidence that it was assigned long-before and conditions of alienation are not applicable. Purchase of huge extent of Assigned Lands or for that matter, Government land in the year 1998 and 1999 is a clear violation of Sec. 3 of A.P Assigned land (POT) Act 1977. As such it is not warranted to interfere with the orders of the Revenue Divisional Officer, Gudur".

10) Aggrieved by the orders of the Joint Collector, SPS Nellore District passed in the proceedings 3rd above, the Petitioner has filed a Revision Petition before the Government under section 4(B) of the A.P. Assigned Lands (Prohibition of Transfers) Act 1977. Accordingly, status-quo orders were issued vide Government Memo. 4th read above.

11) The District Collector, SPS Nellore in his letters 5th and 11th read above has submitted a detailed report in the matter. He has reported that the classification of the above lands is not patta lands as per Diglot Register of the Village, as the petitioner or his predecessors were not in possession of the lands in question. Hence, (DOTS) were noted against the above Sy. Nos in the Diglot Register of the Village. The Appellate Authorities have verified the connected records and examined the citations filed by him and passed orders on the basis of merits. Hence, the Collector, SPS Nellore District has recommended to dismiss the Revision Petition.

12) The Case called on several times and finally heard the case on 18-04-2013. During the hearing, the Officials of the District Collector, SPS Nellore and the Counsel for the Petitioner were present.

13) The Counsel for the Revision Petitioner has submitted written arguments stating that;

- (a) the lands were purchased from previous owners under registered sale deed. The factual of registration of lands prove that there is no embargo on sale of these lands and that stamp duty has been collected as per the basic market value register;
- (b) there is no record or material to say, as to whom the land was original recorded and when it recorded;
- (c) no notice was given to the original assignee;
- (d) there is no record to show that the subject land is assigned land;
- (e) there is no material to say that if the subject land is an assigned land, then what are the terms of assignment;
- (f) there is no material produced by the Government or referred to, as to how the said land was allotted;
- (g) the fact that there was no bar for registration of the land, it shows that it is private patta land;
- (h) the petitioner was issued pattadar passbooks and title deed books;
- (i) the petitioner having been cultivating the lands, growing amla crop, mango, lemon etc.;
- (j) the subject property is recorded with particular values in the basic register of market values, maintained in the office of the Sub-Registrar, which shows that the land can be traded.
- (k) the Petitioner has produced the following material in support of its case:
 - 1) Adangal Pahanis of 1364(1944 AD) and 1408(1987 AD) fasli, shows that the names of the petitioner's previous title holders. There is no reference to the land being an assigned land or Government Land.

- 2) Encumbrance Certificates for the period 01-01-1953 to 14-04-2006, the Survey No.198/7 of the property to an extent of 31 cents was inherited by Pandi David from his forefathers, Pandi Pitchivadu prior to 01-01-1953. The said property then devolved to Pandi Navamani, Pandi Suresh Babu, Pandi Bhaskar Rao from Pandi David. The property was sold to Matam Krishna Murthy on 25-02-1985 through registered sale Deed No.285/1985. Matam Krishna Murthy sold the property to Godi Santhamma on 28.12.87 with Regn.No.4204/a 1360. Later, Godi Santhamma has sold the land to the petitioner on 01-04-1999 under registered sale deed. Hence, it has to be seen that there have been previous sales which were not challenged or questioned by the Government at any point of time. So also, in respect of Sy.No.198/6 admeasuring 29 cents belonged to Palicharla Chethavadu prior to 01.07.1927. Palicharla Veera Raghavaiah and Paricharla Masthanaiah sold the property to Pandi David on 18-07-1973 with Regd.No.385/73-74. The above property was inherited by Pandi Navamani and Pandi Bhaskar Rao. They sold the property to Matam Krishna Murthy on 25-02-1985. Matam Krishna Murthy sold the same to Godi Santhamma on 28-12-1987 and then it was sold to petitioner on 01-04-1999 under Sale Deed bearing Doc.No.368/99.
- 3) True extracts of the Record Holder Volume 43, Reg. No.117 of Bhudanam Village dt.01-07-1927, categorically shows the names of private persons. Basing on this record, several other judgments have been passed in adjoining areas / lands.
- 4) Extract of survey numbers of Bhudanam Village for the period 1998 to 2001 shows the values in the basic register at the office of the Sub-Registrar.
- 5) A copy of 10(1) accounts, also demonstrated the names of the petitioner's predecessors in title.
- 6) The proceedings of the Revenue Divisional Officer, Gudur in D.Dis.(B1). 4009/06 dt.12-01-2010 for the adjoining land, which are similarly placed have been in favour of private parties and the order/s issued by the MRO have been set aside.
- 7) The adjoining lands have been recorded as patta lands, and various proceedings are cited in support of the same.
- 8) There are no records in the O/o. the M.R.O., Chillakuru to show that the subject land is an assigned land. A specific question was posed by the learned judge to the M.R.O., as to what are the documents to show that there was assignment. The M.R.O. categorically admitted that there was no records to show when the land was given and no record to show that what are the terms of assignment. She also admitted that the subject property is inherited property.
- 9) The properties are inherited properties since 1927 onwards, clearly in possession of private parties, which is not disputed.
- 10) The allegations of land encroachment are distinct and different from assigned lands Act.
- 11) The important and crucial feature of an assigned land is the "non-alienation" clause in the original assignment. No document in support of the said assignment has been produced by the Government.
- 12) The patta passbooks demonstrate the long-standing possession of the petitioner over the subject property.
- 13) In the absence of deed of assignment or any other document to say that it is an assigned land, a private party over several decades acquires title by adverse possession.
- 14) A reading of the following case law, shows that it has been consistently held that "the non-alienation clause is an essential ingredient for a property to be classified as an assigned land.

Contd. ...

14) After perusal of the records, reports of the District Administration, and written arguments/ documentary evidence submitted by the Counsel for the Revision Petitioner, it is observed that –

- i) The Respondents came to conclusion that the land is assigned land without bringing on record, considering or analyzing the relevant facts as to the date of assignment and whether the deed of assignment contained a prohibition against alienation. The lands are purchased from previous owners, under registered sale deed. The factual of registration of lands prove that there is no embargo on sale of these lands and that stamp duty has been collected as per the basic market value register. Thus it is evident that in the absence of recorded documentary proof, it cannot be determined that the land is assigned land.
- ii) In a similar case of Sri Md. Shanwaz Hussain, S/o. Late Sri. Haneef in the same Village of Budanam, Chillakur Mandal, S.P.S. Nellore District, the Revenue Divisional Officer. Gudur, S.P.S. Nellore District in his proceedings 7th read above has issued orders that as per RH Volume (43) issued by the Sub-Registrar, Gudur, the lands in question are shown as patta lands prior to 01.07.1927. As per the adangal extracts for the Faslies 1364 and 1408 the lands shown as patta lands. The Dist. Collector, SPS Nellore in another case has issued instructions vide Letter Rc.E8/1348/2007, dt.24.08.2007 to consider the lands as patta lands to allow sales where dots. (...) are found in column No.13 of diglot, taking into consideration of long time possession and sale transactions prior to 1954 there is no doubt that the Act 9 of 1977 applicable retrospectively. But it is applicable only for the assigned lands granted to landless poor with non-alienability condition. In this case, the Tahsildar has not established the lands in question as assigned lands and he was not referred any F.Dis Nos. to the lands resumed by him. Evidently, the lands though originally treated as Govt. lands by indicating with dots in RSR, subsequently they were converted as patta lands. Hence, the resumption orders issued by the Mandal Revenue Officer, Chillakur, SPS Nellore District in proceedings issued are set-aside" by the Revenue Divisional Officer, Gudur in D.Dis.(B1)/2009/2006, dt.12-01-2010.
- iii) Under the circumstances above and keeping in view of the evidences, it is clear that there is no record or material to say, as to whom the land was original recorded and when it recorded. No notice was given to the original assignee. There is no record to show that the subject land is assigned land. There is no material produced by the Competent Authority, as to how, the said land was allotted. The Petitioner was issued pattadar passbooks and title books. The Petitioner have been cultivating the lands, growing amla crop, mango, lemon etc. The subject property is recorded with particular values in the basic register of market values maintained in the office of the Sub-Registrar, which shows that the land can be traded. The Counsel for the Revision Petitioner has also produced the relevant material in support of its case.
- iv) Further as seen from the certified copies of the documents produced by the Counsel for the revision petitioner are shown as absolute owner of the property and has purchased the land from the vendor on payment of market value by paying stamp duty and transfer duty. It clearly shows that the petitioner in a good faith purchased the land and the Registration Authorities have registered the same and released the Documents under provisions of the Registration Act 1908 and ever since the land is under enjoyment of the petitioner. Further as per rule K (i) of A.P Rules under the Registration Act, 1908;

The registering officer shall ensure at the time of presentation for registration of cancellation deeds of deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executants and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State of Central Government annulling the transaction contained in the previously registered deed of conveyance on sale.

- v) Hence as per the above Rule, unless and until the Document which was registered and released is cancelled, by following the procedure as per the rules envisaged above, further action cannot be taken as per the settled Law.

vi) Further, the appellant has purchased the schedule lands covered by Form-I Notice for a valuable consideration under registered sale deed and took possession and enjoyment of the same and also improved the lands have been cultivating the lands by growing amla crop, mango, lemon etc. dint of hard labour and has continued to be in possession even till date.

15) In the above circumstances and since there is no evidence produced by the Competent Authority to prove that the subject land is assigned land, and after perusal of the material submitted by the Counsel for the Revision Petitioner, hereby allow the Revision Petition and set-aside the proceedings of the Joint Collector, SPS Nellore district issued in the proceedings 3rd read above. The status-quo orders issued in the reference 4th read above are hereby cancelled.

16) The District Collector, SPS Nellore is requested to take further necessary action accordingly in the matter. The records received in this case are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

B.R. MEENA,
PRINCIPAL SECRETARY TO GOVERNMENT.

To
The District Collector, Sri Potti Sriramulu Nellore (with encls.)
(By Reg. post with ack. due).

Copy to:-
The Joint Collector, Nellore, Sri Potti Sriramulu Nellore District.
The Tahsildar, Chillakur Mandal, SPS Nellore Dist.(By Reg.post with ack. due).
Sri Md. Zameer Nawaz, S/o. Shah Nawaz R/o. Roshan Manzil, Door No.23/1343,
Takkamitta, Near RTC Bus Stand, Nellore-1, Nellore District ('through the
Tahsildar, Chillakur Mandal) (By Registered post with ack. due).
M/s.Venkata Narayana & Other Advocates Counsel of Smt. Mohd Shaista Begum, /o.
Shah Nawaz, 10-5-3/2/3D, Opp: Garden Towers, 1st Lancer, Ahmed Nagar Road,
Masab Tank, Hyderabad-500 028. (BY Regd. Post with ack. Due)
The P.S. to Prl. Secy. to Govt., Revenue Dept.
SF/SC.-

// Forwarded :: By order //

SECTION OFFICER.